

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.881 OF 2006

Between:

M.Jagadeeswara Rao and others

...Appellants

AND

The Divisional Forest Officer,
Vizianagaram District and others

...Respondents

Counsel for the Appellants :Shri P.Venugopal

Counsel for the Respondents : Government Pleader for
Forests

Dated: 1st September, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 27.02.2006 passed by the learned Single Judge in Review W.P.M.P. (SR) No.8223 of 2006 whereby he dismissed the application filed by the appellants for review of order dated 16.06.2005 passed in Writ Petition No.12694 of 2005 on the ground that the review petitioners have not shown sufficient cause for condonation of delay.

In the writ petition filed by them, the appellants prayed for issue of a direction to the respondents to renew their licences for running saw mills. The learned Single Judge dismissed the writ petition on 16.6.2005 by observing that there was no evidence to show that the petitioners had applied for renewal of their licences which had expired in December 2001. The learned Single Judge also observed that mere payment of certain lump sum amount in the name of licence fee without making applications for that purpose within the time specified in the Andhra Pradesh Saw Mills (Regulation) Rules, 1969 does not obligate the respondents to renew the licence of the writ petitioners.

The writ petitioners (appellants herein) applied for review of order dated 16-6-2005. The petition filed by them was registered as WPMP (SR) No.8223 of 2006. They also filed petition under Section 5 of the Limitation Act for condonation of 214 days delay in filing the review application. The same was registered as WPMP No.1899 of 2006. The learned Single Judge dismissed the petition for condonation of delay by observing that the petitioners have failed to show sufficient cause. As a sequel to this, he dismissed Review WPMP (SR) No.8223 of 2006.

Shri P.Venugopal, learned counsel for the appellants invited our attention to the Full Bench judgments of this Court, Punjab and Haryana and Gujarat High Courts in **Badruka College of Commerce and Arts v. State of Andhra Pradesh**^[1],

Ram Kala v. The Assistant Director, Consolidation of Holdings^[2]

and **Gujarat University v. Miss Sonal P. Shah**^[3] respectively and argued that the provisions of the Code of Civil Procedure and the Limitation Act, 1963 do not, in terms, apply to the proceedings under Article 226 of the Constitution of India and an application filed for review of an order passed by the High Court in exercise of power under Article 226 cannot be dismissed on the ground of the bar of limitation. Learned counsel emphasized that no period of limitation has been prescribed for filing writ petition under Article 226 of the Constitution of India or a petition for review of an order passed under Article 226 of the Constitution and, therefore, the petition for review filed by the petitioners could not have been dismissed by invoking the provisions of the Limitation Act.

Learned Government Pleader for Forests submitted that the appellants had not urged before the learned Single Judge that the provisions of the Limitation Act are not applicable to the proceedings under Article 226 of the Constitution and, therefore, they are estopped from questioning the order under challenge on the ground of non-applicability of the provisions of the Limitation Act, moreso because they themselves had filed W.P.M.P.No.1899 of 2006 for condonation of 214 days delay.

We have thoughtfully considered the respective submissions. In our opinion, even though the appellants had volunteered to file an application under Section 5 of the Limitation Act, the learned Single

Judge committed an error by dismissing the review petition as barred by time.

In **Secretary, Badruka College of Commerce & Arts v. State of Andhra Pradesh** (supra), a Full Bench of this Court considered the following questions:

- “1. Whether (a) the provisions of the Code of Civil Procedure (in short, the Code) and (b) the provisions of Limitation Act, 1963 (in short, the Act) are applicable to the proceedings under Arts. 226 and 227 of the Constitution of India (in short, the Constitution)?
2. If not, what is the effect of Rules 20, 24 and 25 of the Writ Proceeding Rules of Andhra Pradesh, 1977 (in short, the Rules)?

The Full Bench referred to the judgments of the Supreme Court in

State of U.P. v. Vijay Anand Maharaj^[4], **Muljibhai Patel v. Khodidas Board**^[5], **CF. Thirtha Singh v. Bachida**^[6] and **Puran Singh v. State of Punjab**^[7], an earlier Full Bench judgment of this Court in **Government of India v. National Tobacco Co. of India**^[8] and laid down the following propositions:

- 1) It is true that the proceedings under Art. 226 of the Constitution may be either Civil or Criminal depending upon the right asserted or enforced, but still not a suit or the proceedings arising therefrom as settled in **Babubhai Muljibhai Patel's case (AIR 1974 SC 2105)** (supra), **CF. Thirtba Singh v. Bachida**, AIR 1995 SC 830 (sic) and **Desh Pandey v. Gendulal**, (CA. 950/65 Dt. 6-1-1966) (reported in **AIR 1966 SC 1445**). The jurisdiction therein although original is not an ordinary original jurisdiction within the meaning of S. 141 of the Code.
- 2) With the total exclusion of the proceedings under Art. 226 of the Constitution from the purview of S. 141 of the Code, there is no question of making applicable the procedure of the Code 'as far as it can be made applicable to such proceedings'. If in spite of it, the provisions of the Code are made applicable to the proceedings under Art. 226 of the Constitution, it would be repugnant to the extraordinary

powers of the High Court thereunder.

- 3) The Rules are framed under Art. 225 of the Constitution to regulate the proceedings under Art. 226 (Roc. No. 136/SO/77). They came into force on 4-6-1977. They are applicable to the petitions, applications and appeals (Rule 1-C). The Rules being the delegated legislation, has the force of law provided of course they are within the ambit of the article and did not militate against the object or the terms of the substantive article as held in **State of U. P. v. Batuk, (1978) 2 SCC 102 : (1978 Lab 1c 839)**. They being the procedural rules have no effect of substantive law within the dictum in **Prabhu v. Srivastav, AIR 1975 SC 968**. Our own High Court has already ruled in **Venkata v. Dist. Collector, AIR 1969 Andh Pra 381**, that the powers under Art. 226 are not subject to or controlled by anything in Art. 225. Therefore, their purpose and object to regulate the proceedings under Art. 226 cannot be but to achieve the purpose and object of the latter and thus meant to supplement and compliment it.”

The Full Bench then referred to the preamble of the Limitation Act and observed:

"Apparently the Act is meant for suits and other proceedings connected therein and if read in the context of the explanation to Section 141 of the Code, the proceedings under Art. 226 or 227 of the Constitution cannot be read into the expression 'proceedings' in the preamble. The reasoning in **Puran Singh's case (AIR 1996 SC 1092)** to exclude the proceedings under Arts. 226 and 227 in the context should also be extended to the Limitation Act in use of such expression. The Supreme Court in **Makashi v. Menon, AIR 1982 SC 101** and **State of U. P. v. Bahadura, 1983 UJ (SC) 424: (AIR 1983 SC 845)** made it emphatic that the proceedings under Art. 226 of the Constitution not being a suit nor an application to which Limitation Act applies, the provisions of that Act cannot be invoked in such proceedings and that no limitation is provided for such proceedings. That is why even while drafting Rule 20 into the Rules as hereunder, by abundant caution the framers of the rules saved the

discretion of the Court for issuing such directions as it may think fit to give thereon so as to serve the purpose of Art. 226.”

In **Ram Kala v. Consolidation of Holdings**^[9], a Full Bench of the Punjab and Haryana High Court specifically considered the issue of applicability of Article 137 of the Schedule to the Limitation Act to the application filed under Article 226 and held:

“A petition presented to this Court exercising jurisdiction under Article 226 of the Constitution cannot necessarily be regarded as an application under the Code of Civil Procedure. It is an entirely different matter that while entertaining and deciding such an application, this Court may draw upon the principles of the Code of Civil Procedure which are based on equity, justice and good conscience, but in doing so this Court seldom takes recourse to the penal provisions of the said Code. All that has to be seen is whether the grant of such an application would promote the ends of justice or not. We are, therefore, of the view that Article 137 of the Schedule to the Limitation Act cannot be held to govern an application filed in the High Court exercising jurisdiction under Article 226 of the Constitution of India.”

The applicability of the provisions of the Limitation Act was also considered by the Constitution Benches of the Supreme Court in **State of M.P. v. Bhailal Bhai**^[10] and **Tilokchand Motichand v. H.B. Munshi**^[11] and answered in negative, though in both the cases the Supreme Court laid down the proposition that a petition filed after long lapse of time without proper explanation of delay can be dismissed.

In view of the above legal position, it deserves to be reiterated that the provisions of the Limitation Act are not applicable to a petition filed for review of an order passed by the High Court in exercise of power under Article 226 of the Constitution. We are not suggesting that in each and every case, the High Court is bound to entertain the

application for review ignoring unexplained delay of any length, but are of the considered view that the application filed for review of order passed under Article 226 of the Constitution of India cannot be decided by invoking the provisions of Section 5 of the Act.

As a sequel to the above, we hold that the application filed by the appellants under Section 5 of the Act, which was registered as WPMP No.1899 of 2006 was wholly unnecessary. We further hold that the learned Single Judge committed an error by refusing to entertain the application for review on the premise that the appellants have failed to show sufficient cause or explain 214 days delay in filing the review petition.

In the result, the appeal is allowed. Order dated 27.02.2006 passed by the learned Single Judge is set aside with the direction that Review WPMP (SR) No.8223 of 2006 be listed for fresh adjudication before the Single Bench.

As a sequel to disposal of the main appeal, W.A.M.P.Nos.1825 and 1826 of 2006 filed by the appellants for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 01.09.2006

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[\[1\]](#) AIR 1997 AP 179

[\[2\]](#) AIR 1977 P & H 87

[\[3\]](#) AIR 1982 Gujarat 58

[\[4\]](#) AIR 1963 SC 946

- [\[5\]](#) AIR 1974 SC 2105
- [\[6\]](#) AIR 1995 SC 830
- [\[7\]](#) AIR 1996 SC 1092
- [\[8\]](#) AIR 1977 AP 250 (F.B.)
- [\[9\]](#) AIR 1977 P & H 87 (F.B.)
- [\[10\]](#) AIR 1964 SC 1006
- [\[11\]](#) AIR 1970 SC 898